

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
Writ Petition No.2449 of 2007

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Between:

B.V. Ramana Rao and 13 others
... Petitioners

And

The Divisional Railway Manager,
South Central Railways, Vijayawada
and 106 others
... Respondents

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:: ORDER::

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Counsel for the Petitioners: Shri N. Ravi Prasad
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Dated: 23rd April, 2007

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Per G.S. Singhvi, CJ

Having failed to persuade the Central Administrative Tribunal, Hyderabad Bench (for short, 'the Tribunal') to entertain their claim for regular appointment on the posts of Goods Drivers in South Central Railway, the petitioners have filed this petition under Article 226 of the Constitution of India and prayed as under:

"For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to issue a writ or order more particularly one in the nature of a Writ of Certiorari calling for the records on the file of the 1st respondent in his Memorandum No.B/P/608/III/Rg/GDR/SEL/VCL.IV dated 30-6-2005 and consequential orders in Memo No. B/P/608/III/Rg/GDR/S>EL/VCL.IV dated 2-7-2005 and quash the same declaring that the procedure adopted by the official respondents as illegal, arbitrary, contrary to the Rules and violative of Articles 14, 16 and 21 of the Constitution of India and further declare that the appointment of the petitioners as Goods Drivers w.e.f. 20-7-2002 as Regular and declare their probation with all consequential benefits and pass such other order or orders as the Hon'ble Court deems fit and proper in the circumstances of the case."

A perusal of the record shows that while they were working as Traction Assistants/Shunting Drivers in the pay scale of Rs.3050 – Rs.6000, the petitioners were sent for promotional training course meant for the post of Goods Driver. After successful completion of the course, they were promoted as ad hoc Goods Drivers in the scale of Rs.5000 – 8000 with a clear stipulation that the ad hoc promotion will not confer any right upon them and they will not be entitled to claim regular appointment. The orders for their ad hoc promotion were issued on different dates falling between 17-7-2002 to 18-3-2005. Subsequently, the petitioners appeared in the test conducted by the railway

administration for regular promotion to the post of Goods Driver, but could not qualify the same. Therefore, they were reverted as Shunting Drivers vide office order dated 8-7-2005.

The petitioners challenged their reversion in O.A.No.338 of 2006. They pleaded that the method of selection adopted by the administration was totally arbitrary and irrational and that they are entitled to be treated as regularly selected Goods Drivers because they had already passed the promotional training course.

In the counter filed on behalf of the official respondents, it was averred that the writ petitioners had been promoted as Goods Drivers on purely ad hoc basis; that the promotional training course is in no way connected with the selection process prescribed by the Railway Board for recruitment of Goods Driver and that the petitioners had to be reverted as Shunting Drivers because they could not qualify the test held for regular promotion to the post of Goods Driver.

The Tribunal accepted the plea of the official respondents and held that the applicants (the petitioners herein) are not entitled to regular appointment as Goods Drivers because they failed to qualify the test conducted by the railway administration. The Tribunal rejected the other contentions of the petitioners by observing that after having taken part in the process of selection, the applicants are estopped from questioning the same. This is evinced from paragraphs 5.2 and 6 (a), (b) and (c) of the order of the Tribunal, which read as under:

5.2. While the above issue has been basic bone of contention raised by the applicants in these OAs, they have also raised certain other subsidiary issues such as : (a) non-grant of permission to write the exam in vernacular medium of Telugu (b) that since the applicants have been promoted on 'ad hoc'

basis as Goods Drivers after they underwent a pre-promotional training course and also had passed the end of the training exam which included a viva-voce exam, they should not be again subjected to a written examination; (c) thirdly that the percentage of marks for objective type questions should not have been reduced from 50% to 30%.

6. In this regard it is seen that the applicants had participated willingly in the said selection examination (based on the impugned notification) with full knowledge of the various terms and conditions of the said examination but had not been able to successfully clear the same. Hence, this Tribunal considers that all the grievances of the applicants have stemmed from their failure to pass the exam in question and that their objections are mere after thoughts. The pointwise reply given by the official respondents to various objections raised by the applicants are considered valid and factual as they are supported by documentary proofs which are placed on record as detailed below 'ad seriatem'.

a) The applicants are not correct in stating that they have been discriminated by being asked to write the said exam in English while 'some others' were given the question papers in Telugu. The railway administration has consciously taken the decision to relax this condition only for 'Repairs & Maintenance Staff' who had become surplus on account of closure of Steam Loco Sheds (Annexure R-VIII refers).

b) That pre-promotional training course and end of the training exam does not substitute the selection procedure introduced vide Railway Board's Serial Circular No.144/2003 (Annexure R-V).

c) That as per the said Serial Circular objective type questions are to be limited to 20% to 30%."

Shri N. Ravi Prasad, learned counsel for the petitioners argued that his clients are entitled to be treated as regularly promoted Goods

Drivers because they had successfully passed the promotional training course and the Tribunal committed serious error by not entertaining their plea. Learned counsel emphasized that there is no difference in the course contents of the test conducted by the respondents as a part of promotional training and the one conducted for regular selection and argued that failure of the petitioners to qualify the selection test cannot justify their reversion to the cadre of Shunting Drivers. Shri Ravi Prasad then submitted that by having worked as Goods Drivers for 2 to 3 years, the petitioners had acquired sufficient experience and, yet, the railway administration reverted them to the lower post of Shunting Drivers.

In our opinion, there is no merit in either of the contentions. It is not in dispute that the petitioners were promoted as ad hoc Goods Drivers subject to the condition that the same will not confer any right upon them to claim regular appointment. The petitioners joined as ad hoc Goods Drivers without raising any objection. After joining, they did not represent for deleting the said condition. Therefore, they will be deemed to have acquiesced in the conditions imposed by the railway administration at the time of their ad hoc promotion and they cannot turn around and indirectly challenge that condition. Even otherwise, we are convinced that successful completion of the promotional training course by the petitioners did not entitle them to claim regular appointment on the post of Goods Driver, which is a selection post and is required to be filled from among those who qualify the selection. This conclusion of ours is founded on the premise that the petitioners have neither pleaded nor any material has been placed before the Court to show that before sending them for promotional training course, the concerned authority had made selection in accordance with the rules framed by the Railway Board.

We also agree with the Tribunal that after having taken part in the process of selection, the petitioners cannot question the methodology adopted by the official respondents for conducting selection or claim that they should be treated as regularly promoted Goods Drivers despite the fact that they could not qualify the selection held by the railway administration.

There is another fatal flaw in the writ petition. For the reasons best known to them, the petitioners have not prayed for quashing order dated 23-8-2006 passed by the Tribunal in O.A.No.338 of 2006 and without quashing/nullifying that order, this Court cannot declare that they should be treated as regularly promoted as Goods Drivers.

No other point has been argued.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.3140 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S. SINGHVI, CJ

April 23, 2007

C.V. NAGARJUNA REDDY, J

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